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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,639	11/21/2003	Michael J. Faulks	18,098	3447

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EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,639

Applicant(s)

FAULKS ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/17/04, 5/12/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group II, claims 10-36 in the reply filed on December 29, 2005 is acknowledged.

Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Information Disclosure Statements

The information disclosure statements (IDS) submitted on February 17, 2004 and May 12, 2005 were filed after the mailing date of the Application on November 21, 2003. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hwang et al (U.S. Patent No. 4,902,553).

With respect to **Claims 10,12,13,15,24,25**: Hwang teaches a polymeric matrix comprised of a polyolefinic material (e.g. polyisobutylene) and an additive material that is partially soluble in the polymeric matrix material and therefore forms a separate layer on the surface of the matrix. The area where the additive material lies on top of the polymeric matrix surface (having a surface area) therefore defines a target area. Hwang does not teach a basis weight for the layer of additive material. Given that the additive is partially soluble, any additional contribution of weight to the polymeric matrix material by the additive layer would thus be negligible. Hwang teaches an article having the rattle-reducing film wherein an absorbent core is wrapped in a polyethylene/PET bicomponent web having a basis weight of 20 gsm and the rattle-reducing film is adhered to the resulting pad structure. Since both PET and polyethylene are of a polyolefinic nature just as the matrix material is, Examiner asserts that the polymeric

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matrix material with additive would have a basis weight that is approximately equal to the basis weight of the bicomponent web, and thus greater than 3 gsm or 4 gsm. See *In re Fitzgerald, Sanders, & Bagheri*, 205 USPQ 594 (CCPA 1980).

With respect to **Claims 11,22,23**: Hwang teaches that the additive is partially soluble, therefore the components would have been mixed at one time and the amount of additive that precipitated would cover at least 75% because, though the additive did not completely dissolve, Examiner asserts that it was mixed with the polymer matrix material such that it was distributed uniformly throughout the polymer matrix material, thus when cooled would produce a substrate where portions of undissolved additive would appear on the substrate surface.

With respect to **Claims 14,26**: Hwang does not teach the use of olefin-bashed adhesive because the additive is self-adhering by virtue of being partially miscible with the polymer matrix material. Thus, a polyolefinic adhesive holding a separate layer of the additive would be an obvious alternative to one of ordinary skill in the art that would achieve an equivalent rattle-reducing film.

With respect to **Claims 16,28**: Hwang teaches that the polyolefin is a crystallizable thermoplastic material and thus would form a substantially nonelastomeric film. (Col. 4, lines 29-35)

With respect to **Claims 17,29,36**: Hwang teaches an absorbent pad wherein the rattle-reducing film is adhered to a polyethylene/PET nonwoven bicomponent web. (Col. 11, lines 18-20)

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With respect to **Claims 18,30**: Please see the rejection of claim 1, Since Hwang teaches a polyolefinic material for the polymer matrix, Hwang teaches either of polyethylene or polypropylene.

With respect to **Claims 19**: Hwang teaches that the rattle-free film is liquid-impermeable therefore the polymer matrix is liquid-impermeable. (Col. 3, lines 27-30)

With respect to **Claims 20,31**: Hwang teaches that the rattle-reducing film is microporous and that the film is vapor-permeable but liquid-impermeable (Col. 3, lines 27-30), and therefore teaches that the film is non-apertured.

With respect to **Claims 21,27**: Hwang teaches an absorbent article comprising a top sheet, an absorbent core and a backsheet, said backsheet being comprised of a rattle-reducing film further comprised of a thermoplastic polymer matrix mixed with an additive. Please see the rejection of claim 1 as that rejection addresses all of the remaining limitations of claim 21.

With respect to **Claims 32-35**: Please see the rejection of Claims 1 and 21 in addition to the following: Hwang teaches that the rattle-reducing film has a decibel level of less than 44 db at 1 KHz against a background noise level of 43 db. (Col. 9, Table 1) Hwang teaches that if the decibel level of the film is below the level in an office environment, i.e. below 43 dB value, the crinkling is undetectable. Therefore, the film taught by Hwang has its own noise level of 1 dB at 1 kHz when the background noise is removed, which is less than a noise level of 30 dB at 2 kHz and 28 dB at 4 kHz.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

